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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/553,665

Filing Date: July 27, 2006

Appellant(s): GALLOU ET AL.

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Joel Fogelson

For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 2/9/2011 appealing from the Office action mailed 10/12/2010.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:  
Claims 1-15 have been rejected and are pending.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

### **(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

### **(8) Evidence Relied Upon**

20030037160	Wall et al.	2-2003
20020037160	Harumoto et al.	1-2002
20040168052	Clisham et al.	8-2004

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. **Claims 1, 4, 5, 7, 8, 9-11, 14 and 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wall et al. (U.S. Patent 2003/0037160 A1, hereinafter "Wall") in view of Harumoto et al.(U.S. Patent Pub. No. 2002/0004840 A1, hereinafter "Harumoto").

As to **claim 1**, Wall discloses a data requesting device through at least one first communication network from at least one data server , said data requesting device being able to support up to a maximum bandwidth rate, and comprising:

a sending module for sending requests of determined data to the server via at least one second communication network ([0052]; the HID device transmits request to the computational service provider to provide the requested data via a interconnection fabric),

a receiving module for receiving streamed data from said server into said input buffer via said first communication network and for providing said data to processing

means for them to be exploited ([0030]; the HIDs receive the output from the service providers and inherently store them in memory or a cache on the system to process)

a retriever module for retrieving information comprising information representative of said maximum bandwidth rate ([0114], [0034]; the resource optimization module to determine how much of the available network bandwidth to utilize while transmitting data) and

said sending module sends to said server via said second network said information, so that said server is able to determine at least one size of successive portions of said required data ([0085]; the transmitter determines and controls the sequence size is specified to govern how the audio data is processed)

However, Wall does not disclose the sending module determines at least one delay between two successive sending steps of said portions

Harumoto does disclose the device wherein the said sending module determines at least one delay between two successive sending steps of said portions. ([0026]; the delay time determination determines a delay time from when the terminal reads the data to the buffer)

At the time of the invention , it would have been obvious to a person of ordinary skilled in the art to modify Wall by incorporating delay time determination unit to determine the delay time as disclosed by Harumoto . The rationale behind this modification is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

As to **claim 4**, Wall-Harumoto discloses a system wherein said data requesting device an injector (Harumoto,fig.3, CPU , where the CPU performs the functions of the injector) to transfer said data from said central memory (Harumoto,fig.3, 503, ROM)to said processing means only when said data in said central memory fill up to a predetermined middle threshold level (Harumoto [0156], threshold value) of said central memory (fig.3, 503, ROM). ([155],[0156])

As to **claim 5**, Wall-Harumoto discloses a system wherein at least one of said threshold levels (Harumoto,[0141], S\_delay) of said central memory depends on a round-trip time between said data requesting device and said server. (Harumoto,[0141], where the delay time to access data from the server)

As to **claim 7**, Wall-Harumoto discloses a decoder (Harumoto,fig.3, 509),

As to **claim 8**, this is a method corresponding to the system in claim 1. Therefore it has been analyzed and rejected based upon system in claim 1.

As to **claim 9**, Wall-Harumoto discloses a device comprising:

a receiving module for receiving requests of determined data from at least one data requesting device (Wall, [0030]; the HIDs receive the output from the service providers and inherently store them in memory or a cache on the system to process),

specification means for determining at least one size of successive portions of said data to be provided to said data requesting device (Wall, [0116]; the computational server receives a bandwidth allocation message ), and

a streaming module (Harumoto, [0172], streaming performed by server) for triggering streaming of said data portions to said data requesting device (Harumoto, [0172], Server can stream data to the terminal and control its speed),

said receiving module receiving from said data requesting device information representative of capacities of said data requesting device (Wall, [0052], provides capacity to the system independent of the destination device) and

said specification means being intended to determine said portion size in function of said information(Wall, [0085]; the transmitter determines and controls the sequence size is specified to govern how the audio data is processed),

said capacities comprising a maximum bandwidth rate being supported by said data requesting device (Wall, [0114], [0115]; the maximum transmission rate of the HID

is identified and information from bandwidth allocation message is received at the computational server)

    said specification means determining at least one delay between two successive sending steps of said portions in function of said information(Harumoto, [0134]),

    and said streaming module periodically triggers streaming (Harumoto, [0134]; where transmission speed indicating the amount of information to be transmitted within in a unit time) of said data portions having said portion size to said data requesting device, with a period equal to said delay,(Harumoto, [0134], [0154], [0175])

    said data transmitting device being provided for a data requesting device according to claim 1.

As to **claim 10**, this is a method corresponding to the system in claim 2.  
Therefore it has been analyzed and rejected based upon system in claim 2.

As to **claim 11**, Wall-Harumoto discloses a device, wherein said data requesting device being able to support up to a maximum bandwidth rate ( Harumoto, [0139], maximum transmission capacity) and comprising at least one input buffer having an input buffer side ( Harumoto, [0134]), said capacities consist in said maximum bandwidth rate and said input buffer side.

As to **claim 14**, this is a method corresponding to the system in claim 1.  
Therefore it has been analyzed and rejected based upon system in claim 1.

As to **claim 15**, this is a program corresponding to the system in claim 1.  
Therefore it has been analyzed and rejected based upon system in claim 1.

2.     **Claims 2, 3, 6, 12 and 13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wall in view of Harumoto in further view of Clisham et al. (U.S. Patent Pub. No. 2004/0168052 A1, hereinafter “Clisham”)

As to **claim 2**, Wall-Harumoto discloses the device wherein it comprises of a data pump (Harumoto, playback module) intended to extract data available ( Harumoto, [0155], where playback module reads data streams from buffer ) in said input buffer (Harumoto, fig.3, 505, reception buffer) and to transfer said data into a central memory (Harumoto, fig.3, 508, decoder buffer) for said data to be exploited by said processing means (Harumoto, [0122], where playback module is the processing means whereby it performs actions on the data ) ,

Harumoto et al. does not disclose a pause control signal when said data in said and in that said sending means are intended to transmit said pause control signal to said server.

Clisham et al. does discloses a client device producing a pause control signal (fig.4, 460, pause ) and in that said sending means are intended to transmit said pause control signal to said server. ([0097])

At the time of the invention , it would have been obvious to a person of ordinary skilled in the art to modify Wall-Harumoto by incorporating a pause request to the server as disclosed by Clisham. The rationale behind this is modification would be that a person of ordinary skill in the art would be motivated to combine the prior arts to achieve the claimed invention.

As to **claim 3**, Wall-Harumoto discloses a Data requesting device wherein said data in said central memory (fig.3, 502 , ROM) decrease down to a predetermined low threshold level ([0157], threshold value) of said central memory ([0156])

Clisham et al. discloses a device wherein said data pump ([0097], protocol component ) is able to produce a resume control signal (fig.4, 450,play state) when the data transfer from said input buffer to said central memory has been paused and in that said sending means ([0096], protocol component) are intended to transmit said resume control signal ([0096], play state) to said server. ([0095])

As to **claim 6**, Wall-Harumoto-Clisham discloses the system wherein said data requesting device is able to produce pause (Clisham, fig.4, 460, pause ), resume

(Clisham, fig.4, 450, play has the same function as resume) and seek control signals (Clisham fig. 4, 470, seek) for respectively pausing and resuming data streaming and for positioning at given appropriate places of said determined data, and said sending means are intended to transmit to said server sequences of successively said pause, seek and resume control signals (Clisham, [0094]-[0098]), so as to allow at least one feature among fast motion and reverse motion.(Chisham, [0098]), where fast forward and rewind operations performed)

As to **claim 12**, Wall-Harumoto-Clisham discloses a device wherein said receiving means (Clisham, [0098], client device) are intended to receive slow motion messages( Clisham, [0098], where seek state allows the user to preview images ) from said data requesting device, and said specification means are intended to determine at least one increased value of said period when said slow motion messages are received. (Clisham, [0098])

As to **claim 13**, Wall-Harumoto-Clisham does discloses a device, wherein said receiving means ([0098], client device) are intended to receive at least one kind of messages among fast motion and reverse motion messages (Clisham, [0098]), where fast forward and rewind operations performed), and said data transmitting device comprises parsing means able to identify successive relevant places in said determined data for at least one of said fast and reverse motions, said specification means being provided for successively positioning at said places, when one of said fast motion and reverse motion messages is received. (Clisham, [0098])

## **(10) Response to Argument**

### **Claim 1 and 9**

(1) The Appellant argues that the prior art of record fails to disclose the retriever module for retrieving information comprising information representative of said

maximum bandwidth rate and the retriever module disclosed in Wall is not a part of the HID as required by the claim limitation. (See brief, pg. 4-5, and pg.8-9)

In reply to (1), the Appellant argues that the available network bandwidth disclosed in Wall reference is not the same as the maximum bandwidth rate disclosed in the claims. See Appellant's brief pg. 4-5.

The determination of maximum bandwidth by the retriever module is mentioned in the Appellant's specification in pg.6, lines 12-16 and pg.7, lines 13-14. From the description the INFO described pertains to the maximum bandwidth rate and size of buffer. Based on Wall, the computational service provider is the data transmitting device as disclosed by the claim limitation while the HID devices are the data requesting device as disclosed by the claim limitation. See Wall, figure 11. The function described in Wall wherein the bandwidth of the network rate is determined and is then known by the computational service provider as well as the HID. See Wall, [0114], [0115]. The Wall reference further discloses clearly a resource optimization module, to determine how much of the available network bandwidth to utilize while transmitting data to a particular HID. ([0034]) It is apparent from the Wall reference that the HID device must determine the transmission capacity before the computational service provider can actually determine the available network bandwidth to utilize while transmitting data to a particular HID . Therefore the Wall reference does disclose the limitation wherein disclose the retriever module (HID) for retrieving information comprising information representative of said maximum bandwidth rate (transmission capacity used to calculate the available network bandwidth)

Further, the Appellant argues that the retriever module disclosed in Wall is not a part of the HID as required by the claim limitation. (See brief, pg. 5)

However, the Wall reference shows that the HID responds by transmitting a bandwidth allocation message. See Wall, [0117]. This bandwidth allocation message shows that there is a program that determines the bandwidth in the HID and therefore resides on the same system as the HID devices. Therefore the Wall reference does disclose that the retriever module (HID device program) disclosed in Wall is a part of the

HID. Therefore, contrary to the Appellants argument, the Wall reference does disclose the above limitation of the claim.

(2) The appellant argues that the prior art of record does not disclose the claimed feature of "said sending module sends to said server via said second network said information, so that said server is able to determine at least one size of successive portions of said required data and at least one delay between two successive sending steps of said portions". (See brief, pg. 5-7) More particularly, the appellant argues that the examiner ostensibly confounds the transmitter of Wall with the "sending module" of the data requesting device of claim 1. See brief, pg. 6.

In reply to (2), the claim limitation "so that said server is able to determine at least one size of successive portions of said required data and at least one delay between two successive sending steps of said portions" should be given no patentable weight. The claim is directed towards elements of the data request device, while this limitation only further limits the functionality of a server. This particular functionality of the server in no way limits the structure or functionality of the data receiving device, so this language provides no meaningful limitations to the claimed device. As result, the language does not need to be shown in the prior art to properly anticipate the language of the claim

Further, the Appellants specification discloses that the "successive portion of data" is streaming of the requested data in the form of data portions. See Spec., pg. 6, lines 10-20. This shows that the "successive portions of said required data" merely means the data is part of streaming data that is transmitted to a receiver continuously.

Wall discloses that the HID determines the bandwidth preference and sends a bandwidth allocation message to the computational server. The computational server then utilizes the amount of bandwidth specified in the bandwidth allocation message to transmit data to the requesting HID. See Wall, [0115]-[0116]. Therefore this bandwidth message sends the computational server bandwidth information which is used to allow the computational server to send transmit a data stream which is the same as the limitation "size of successive portions of said required data". Therefore, the Wall

reference does disclose said sending module (HID sends message) sends to said server via said second network said information (bandwidth allocation message), so that said server is able to determine at least one size of successive portions of said required data (the data stream sent to the HID is based on the information in bandwidth allocation message).

Further, the Appellant argues that "at least one delay between two successive sending steps of said portions" is not disclosed by the prior art of record. See brief, pg. 7.

The Harumoto reference does disclose that the delay time determination step determines a delay time from when the terminal writes stream data to the buffer to when the terminal reads data to start playback. See Harumoto, [0026]. This shows the step of determining the delay time when transmitting continuous streaming data. Therefore the Harumoto reference does disclose determining the at least one delay (delay time) between two successive sending steps of said portions (the successive portions of streaming data). Therefore, contrary to the Appellants arguments, the Wall reference in view of the Harumoto reference does disclose the limitations of the claim.

Further, the Appellant argues that the appellant argues that the examiner ostensibly confounds the transmitter of Wall with the "sending module" of the data requesting device of claim 1. See brief, pg.6. However, this is not the case as Wall discloses an HID that transmits a bandwidth allocation message to the computational server and therefore consists of a sending or transmitting part. See Wall, [0116].

### **Claim 9**

(3) The Appellant argues that the prior art of record does not disclose said capacities comprising a maximum bandwidth rate being supported by the data requesting device, (See brief, pg 9)

In reply to (3), Wall clearly discloses the user having control over the amount of bandwidth utilized. This can be sent to the computational server using the bandwidth allocation message which is used to control the bandwidth of the data stream transmitted and can not exceed the amount of bandwidth available. See Wall, [0115],

[0116]. For example, the HID and the computational service provider can supports a data transmission rate of 100 megabits per second and the entire or maximum bandwidth can be requested by the HID. See Wall, [0114]. Thus the maximum transmission rate is identified and data stream is transmitted to the HID based on the identified and the information received in the bandwidth allocation message. Therefore, the Wall reference does disclose said capacities comprising a maximum bandwidth rate (maximum transmission rate) being supported by the data requesting device (HID).

Therefore, contrary to the Applicants argument, the Wall reference in view of the Harumoto reference does disclose the limitation of the claim.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/J. C./

Examiner, Art Unit 2456

Conferees:

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